S.B. Civil First Appeal No.364/2005

DATE OF ORDER : - 10.8.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.MR Singhvi]
Mr.Girish Joshi], for the appellant.

Mr.Rajendra Mehta,]
Mr.Arun Bhansali]
Mr.RK Purohit], for the respondent no.1-caveator.

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Learned counsel for the appellant after arguing at length submitted that appellant may be permitted to withdraw the suit so that he may file a proper suit.

It is true that the trial court in impugned orders has made certain observations on merit of the case also, but while deciding application under Order 7 Rule 11 CPC, the trial court should not have observed on merit while rejecting the plaint itself. Therefore, those observations cannot come in way of the plaintiff in any manner in case he files a fresh suit as the plaintiff can maintain the fresh suit on same cause of action because of the fact that plaintiff's pliant has been rejected under Section 69(2) of the Partnership Act

In view of the above, leave to withdraw the suit with liberty to

file fresh suit in accordance with law, is granted. Hence, the suit of the plaintiff stands dismissed having withdrawn with liberty and consequently, this appeal is dismissed as having become infructuous.

(Prakash Tatia), J.

c.p.goyal/-